



**LOWERS
& ASSOCIATES**

International Risk Mitigation Partners

A Lowers Risk Group Company | www.LowersRiskGroup.com

April 29, 2024

Via Electronic Mail: lee.clayton@swiftcurrie.com

Lee Clayton, Esq.

Swift, Currie, McGhee & Hiers, LLP

1355 Peachtree Street NE, Suite 300

Atlanta, GA 30309

RE: *Demario Newton, et. al. v. Wingate Management Company, LLC*

Dear Attorney Clayton:

Please find my **Expert Opinions** for the above referenced case. I reserve the right to supplement and/or amend this report in the event additional relevant information is made available. I further reserve the right to rebut additional opinions that may be presented by Plaintiff's expert witness.

Qualifications:

I am currently the President of Lowers & Associates, LLC, (L&A), a consulting firm which provides security management, risk mitigation, and crime prevention consulting services to business entities throughout the United States.

I provide expert witness and testimony services through case analysis in civil actions involving claims of negligent/inadequate security or security misconduct. I have evaluated more than 900 premises liability/inadequate security cases. (*See attached list of expert testimony for past 5 years*).



www.lowerrisk.com

office (540) 338-7151 fax (540) 338-3131
125 East Hirst Road, Suite 3C Purcellville, VA 20132

A Lowers Risk Group Company | www.LowersRiskGroup.com

I have conducted numerous training seminars in the areas of crime prevention, security management, post incident response, workplace violence, and premises liability. I have been an instructor at Northeastern University where I taught courses in civil liability and the legal aspects of security management and operations.

Prior to joining Lowers Risk Group, I was the President and COO for CAP Index, Inc, which produces the CAP Index, a private, comprehensive site-specific crime risk report for businesses and government agencies in the U.S., Canada, and the United Kingdom. In addition, I provided security management consulting services and risk/liability mitigation solutions to private industry and the public sector. I also was retained as an expert witness in litigation charging negligent security.

Formerly, I was the Vice President and Principal Consultant at Liability Consultants, Inc., a security management consulting firm. In addition, I have worked as a loss-prevention investigator for Saks Fifth Avenue in Boston, Massachusetts, The May Company in Denver, Colorado, and have conducted private investigations for firms in Boston and in Denver, Colorado. I have also been employed as an Investigative Aide to the Department of Justice, Drug Enforcement Administration in New York and Boston and have performed an internal investigation for the U.S. Customs Service.

I received my Juris Doctor degree from Suffolk University and a Bachelor of Science in Criminal Justice degree from Northeastern University in Boston, Massachusetts. I am a member of the American Society for Industrial Security, Loss Prevention Research Council, as well as many other security/crime prevention associations. *(C.V. & Fee Agreement Attached)*

Introduction & Methodology:

I have been retained by the defense counsel for Wingate Management Company, LLC, to offer my expert opinion in this matter. The statements and opinions that follow are based on my education, experience, and training in the field of security management, crime prevention, and asset protection, as well as the application of generally accepted practices in the field of security and crime prevention. In addition, I have reviewed the following documents and discovery materials produced to me by you and otherwise available to me which relate to my work.

My review of this matter is consistent with the forensic methodology suggested by the International Association of Professional Security Consultants (IAPSC) and the ASIS General Risk Assessment Guidelines. I reserve the right to supplement my opinions in the event that other materials are made available subsequent to this Report.

Materials Reviewed to Date:

- 1) Case Pleadings
- 2) Atlanta Police Department's Subject Incident Report
- 3) Surveillance Video of the Subject Incident
- 4) Depositions (w/ associated attachments as available) of:
 - Jim Tate
 - Dottie Davis
 - Cynthia Bianco
 - Carmisha "Kelly" Young
 - Devin Bean
 - Alanna Robinson
 - Rod Teachy
 - Stephanie Lewis
 - Demetrius McNeal
 - Jazzmine Mangham
 - Tiarra Shaneka Grigg
 - Kiarra Roland
 - Naporro Roland
 - Santeba Seaborn
 - Ryan Jones (Taylor v. Bedford Pines)
 - Douglas Little (Taylor v. Bedford Pines)
 - Justin Jackson (Taylor v. Bedford Pines)
 - Roland Claud (Taylor v. Bedford Pines)
 - Renato Anaya (Taylor v. Bedford Pines)

5) Discovery Production, Including:

- Bedford Pines 2021 Security Presentation
- Bedford Pines Issues Cover Letter to Invest Atlanta
- Security Meeting Minutes through July 2020
- Affidavit of Jazzmine Mangham
- Affidavit of Naporro Roland
- Affidavit of Santeba Seaborn
- Affidavit of Stephanie Lewis
- Affidavit of Tamanika Woods
- Discovery Files Regarding the Plaintiffs' Backgrounds
- APD Hiring & Scheduling Communication & Documents
- APD Officers' Personnel Files
- APD Officers' Timecards
- APD Patrol Reports & Associated Communication
- APD Officers' Agreements
- Security Employee Roster
- Communication w/ Lt. Little
- Community Outreach Meeting Notes
- Community Outreach Communication
- Contract w/ Atlanta Police Foundation re. Cameras
- Contract w/ GA Power re. Cameras
- Contract w/ LOI Atlanta re. Police Substation
- Contract w/ Plaza Security
- Criminal Trespass Book
- Maintenance Reports & Associated Communication
- Communication re. Physical Security (Alarms, Cameras, Lighting, Vehicle)
- Davis Corporate Training Documentation
- Plaza Security 365-Day Plan
- Plaza Security Invoices
- Plaza Security Communication
- Safer Places Communications
- Weekly Activity Reports
- Staff Meeting Agendas
- Communication re. Security & Security Personnel Budgets
- Security Budget & Expenses
- Communication re. K-9 Use

Factual Incident Overview:

According to evidence presented in the Atlanta Police Department's report regarding the subject incident, #20-182-0072-00, surveillance video, and the testimony of the deponents, on the night of June 30, 2020, at approximately 1:08 am, Plaintiffs Ricky Phillips, Marcus Sims (deceased), Kenneth Long, Keiontay Davis, and Demario Newton were congregating outside of 639 Parkway Drive NE, Atlanta, GA 30308, a building located within the Bedford Pines apartment community.

While the group was standing outside of 639 Parkway, a vehicle drove past, traveling northbound on Parkway Drive NE, and slowed its speed. Occupants of the vehicle began shooting at the Plaintiffs' group, and members of the group returned fire (APD Report Narrative). Plaintiff Sims was struck at least five times and died as a result of his wounds. The other four Plaintiffs drove to AMC hospital to receive treatment for their gunshot wounds. As of the date of this report the identities of the perpetrators within the vehicle remain unknown.

Surveillance video of the incident was captured by a nearby pole camera and displays the following timeline of events.

[Note that the video does not include a timestamp and the times noted below indicate duration since the start of the video.]

- The Plaintiffs appear to be standing in front of building #639 from the start of the video. They are mostly obstructed by building #633 which is located closer to the street.
- 5:44: Gunfire is visible in the area between the street and the property.
- 5:46: The assailants' vehicle slowly drives past, still firing. A second vehicle follows immediately behind; however, it is not apparent from the video whether shots are being fired from this vehicle as well. Muzzle flashes and ricochet sparks in the surrounding area are visible.
- 5:50: The gunfight appears to conclude, having lasted approximately six seconds. At no point during the exchange of fire are members of the Plaintiffs' group visible.

- 5:58: The assailants' vehicle drives down the street and turns away, out of sight. At the same time, three members of the Plaintiffs' group appear on camera:
 - One runs down the sidewalk, beneath the camera, trailing blood.
 - One briefly runs into frame within the park area but turns back behind the building.
 - One hops on one leg in the park area, the other leg apparently injured, before eventually collapsing.
- Bystanders arrive and begin to render aid, including carrying away the man with the injured leg.
- 9:52: Four minutes after the shooting a uniformed police officer walks into frame, approaching from the opposite side of Parkway Drive NE.

Findings/Opinions:

It is my professional opinion, based on a reasonable degree of certainty, given the facts produced in this case and applying my education, experience, and training in the field of security and crime prevention, that the actions of the Defendant were reasonable and consistent with generally accepted security practices for a multi-family housing facility of this type, size, and location, given the nature of the risk prior to the incident on June 30, 2020.

The Defendant utilized security measures and protocols that both met and exceeded industry best practices for a multi-family affordable housing facility of this nature. The Defendant utilized a diverse array of available security measures in their effort to mitigate crime on the property. Further, any additional security measures in place at the time would have been unlikely to deter the sudden, targeted drive-by shooting that occurred on June 30, 2020, at approximately 1:08 am.

Crime Risk Analysis:

1. Prior Crime/Event History at the Bedford Pines apartment community was known to the Defendant and to local law enforcement, and efforts were ongoing to address and mitigate crime on and around the premises.

The Defendant maintained an active relationship with the Atlanta Police Department and was aware of the history of criminal activity, including shootings, which had occurred within and about the Bedford Pines apartment community prior to June 30, 2020. The 600 block of Parkway Drive NE was a known problem area and had been identified as such in the Bedford Pines Master Redevelopment Plan. The APD had gone so far as to form the specialized discretionary Boulevard Unit to address drug and other gang-related activity in the area.

Despite the fact that crime, including violent crime, was known to occur in the vicinity of the Bedford Pines apartment community, a sudden, targeted drive-by shooting could not have been reasonably anticipated or prevented based upon the unpredictable nature of the crime itself and the physical layout of the apartment community which abuts publicly accessible roadways.

2. The security measures in place at the Bedford Pines apartment community located within the vicinity of 639 Parkway Drive NE, Atlanta, GA both met and exceeded industry best practices for multi-family housing communities of this type and size on June 30, 2020. Based on the level of risk, the Defendant exercised reasonable care given the circumstances.

The Defendant implemented and strove consistently to optimize a diverse array of security measures within the Bedford Pines apartment community prior to June 30, 2020, including but not limited to:

- Utilization of uniformed off-duty Atlanta Police Department officers to provide a dedicated on-site security presence.
- Utilization of uniformed law enforcement personnel from neighboring jurisdictions, as available, to fill scheduling gaps when off-duty APD officers were not available.
- Raising the pay rate for off-duty officers to a competitive \$51 per hour in 2019.

- Safety training for Wingate employees via an outside consultant in 2018.
- Contracting with Safer Places in October of 2018 to identify and hire a dedicated on-site security director.
- Contracting with Plaza Security in March of 2019 to fill the security director role in order to optimize Bedford Pines' security program.
- Installation of Georgia Power and Atlanta Police Foundation cameras and a license plate reader and/or integration of these systems with APD in 2019 and 2020 in order to allow both review and optional live monitoring by law enforcement.
- Installation of 'no loitering/soliciting/trespassing' and 'permit parking only' signage throughout the community in 2019.
- Installation of LED lighting throughout the community in 2019.
- Installation of new doors throughout the community in 2019.
- Installation of fencing throughout the community to create barriers for walk-through traffic in 2019.
- Routine, recurring maintenance checks including door/lock and lighting checks with follow-up repairs.
- Planned demolition of buildings on the 600 Block of Parkway Drive NE (planning began in April of 2019, HUD authorization was granted on June 25, 2020).
- Purchase of a patrol vehicle for off-duty officer use in 2019.
- Purchase of GPS-tracked radios for off-duty officer use.
- Creation of a dedicated security office at 443 Ponce de Leon for use by law enforcement officers.
- Efforts to create an APD precinct within the neighborhood.
- Implementation of a tip hotline with call/text capabilities for callers to anonymously report security issues/concerns in 2019.
- Enforcement of lease violations and legal eviction of offenders, and maintenance of a criminal activity & eviction log.
- Creation of Carol Cooley's Property Activity Monitor role responsible for reviewing police reports in order to identify residents/guests involved in criminal activity.
- Liaising with APD to address on-duty officer coverage within, and responsiveness to, calls from the community.

- Liaising with local government to implement security measures including a dusk-to-dawn closure of the neighboring Peace Park and parking prohibitions on portions of Parkway Drive NE.
- Liaising efforts with businesses within the community to improve their security posture, including discounted security services via Plaza Security.
- Bi-weekly security meeting attended by Wingate management/ownership, Plaza Security, and various other attendees to address security issues, brainstorm solutions, and track progress.

Security meeting notes taken prior to and immediately following the date of the incident outline, in detail, the ongoing collaborative effort between Wingate Management Company, Plaza Security, the Atlanta Police Department, the City of Atlanta, and other involved parties to address and mitigate crime in and around the Bedford Pines apartment community and surrounding public spaces.

Off-duty Atlanta Police Department officers were utilized by the Defendant both because of their effectiveness as uniformed law enforcement officers and in order to establish and maintain a strong partnership between the Defendant and the community (Tate Depo. P73, P165). In addition, traditional third-party private security was not deemed appropriate given the crime-related challenges in and around the community. In October of 2019 the Defendant attempted to contract with armed private security provider Defender Group in an effort to obtain supplemental security coverage; however, Defender Group ultimately spent one weekend acquainting itself with the property before declining to move forward with the agreement (Tate Depo. P92).

Challenges faced by the Defendant in retaining adequate overnight and weekend off-duty APD officer coverage stemmed from staffing challenges faced by the department overall, which were exacerbated by the COVID-19 pandemic and civil unrest in June of 2020. In March of 2020, APD Lt. Villaroel met with the Defendant to discuss the department's, "tremendous," staffing issues and the resulting lack of on-duty presence and 911 call responsiveness. In addition to the limited police officer staffing pool, certain restrictions limited the Defendant's ability to enforce community rules, including the fact that Atlanta does not have public loitering ordinances in

effect and APD's COVID policy which halted arrests for criminal trespassing at the time (Tate Depo, P88, P123).

The Defendant did everything it reasonably could to mitigate the risk of crime and provide a security posture consistent with the needs of the community.

3. The sudden and targeted drive-by shooting of the Plaintiffs by unidentified assailants inside of a vehicle traversing a public street on June 30, 2020, at approximately 1:08 am, on Parkway Drive NE, Atlanta, GA occurred quickly and without warning and could not have been reasonably anticipated or prevented.

Based on my review of the file materials produced in this case, this was a targeted shooting which occurred without warning and in a matter of seconds.

The scattered layout of the Bedford Pines community, which abuts public streets, prevents any form of pedestrian or vehicular access control on City of Atlanta property. The assailants opened fire upon the Plaintiffs from a vehicle traveling on Parkway Drive NE, a public thoroughfare which intersects with US Route 78 less than 500 feet from the site of the incident.

At the time of the incident the Plaintiffs were loitering outside of Building #639 in violation of Bedford Pines' posted rules. Signage prohibiting loitering is clearly visible on Building #633 in the surveillance video of the incident itself. In addition, one of the Plaintiffs, Kenneth Long, had been previously criminally trespassed from the property and subsequently arrested for violation of this trespass in January of 2020 (Tate Depo. P217).

Any perceived deficiencies in the security program implemented by the Defendant would most likely have had no impact on preventing this incident from occurring.

Conclusion:

It is my professional opinion, based on a reasonable degree of certainty, after reviewing the materials produced thus far and applying generally accepted practices in the field of safety and security, along with my professional experience, education, and training in the field of security management and crime prevention with regard to multi-family affordable housing, that Defendant Wingate Community Management, LLC provided a reasonable and adequate level of security, given the risk at the Bedford Pines apartment community in the vicinity of 639 Parkway Drive NE, Atlanta, GA, on or before the night of June 30, 2020.

Any perceived security program deficiencies claimed by the Plaintiffs at the time of this incident, and their deterrence value or ability to intervene given this specific set of facts, is speculative. The community's layout, scattered throughout a dense urban area and intercut by public roadways, strictly limited the Defendant's ability to control access to the premises and allowed free access to passing vehicles. In response to these challenges, the Defendant implemented and consistently worked to optimize a diverse array of security measures as outlined in this report. Based upon the information reviewed to date, it is my opinion that the Defendant did everything that was reasonably possible to address and mitigate crime within the Bedford Pines apartment community.

Security practices and the security posture at a specific location evolve when reasonable and necessary, based on changes in risk, operational feasibility, and likelihood of relative risk mitigation. It is my opinion that Defendant Wingate Property Management, LLC has met industry best practices and responds to incidents appropriately. In my professional opinion, based upon a reasonable degree of certainty, this sudden and targeted drive-by shooting from a public street onto the Defendant's property could not have been reasonably anticipated nor prevented.

A handwritten signature in black ink, appearing to read 'Jon D. Groussman', with a long horizontal stroke extending to the right.

Jon D. Groussman, J.D.